

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL ANTHONY STEPHENS,

Defendant-Appellant.

UNPUBLISHED

April 23, 2002

No. 229167

Oakland Circuit Court

LC No. 2000-170464-FC

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony murder, MCL 750.316, conspiracy to commit armed robbery, MCL 750.157a and MCL 750.529, assault with intent to rob while armed, MCL 750.89, felon in possession of a firearm, MCL 750.224f, four counts of possession of a firearm during the commission of a felony, MCL 750.227b, and carrying a concealed weapon, MCL 750.227. He was sentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of life without parole for the murder conviction, twenty-five to fifty years for the conspiracy conviction, twenty-five to fifty years for the assault with intent to rob conviction, five to ten years for the felon in possession conviction, five to ten years for the CCW conviction, and four consecutive two-year terms for the felony-firearm convictions. We vacate defendant's conviction and sentence for assault with intent to rob while armed, but affirm his remaining convictions and sentences.

I

Defendant first argues that the evidence was insufficient to support each of his convictions. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 478 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Defendant asserts that the corpus delicti was not adequately established because there was no evidence independent of his confession that he committed the charged offenses. We disagree.

The purpose of the corpus delicti rule is to prevent the use of a defendant's confession to convict the defendant of a crime that did not occur. *People v Konrad*, 449 Mich 263, 269; 536 NW2d 517 (1995); *People v Emerson (After Remand)*, 203 Mich App 345, 347; 512 NW2d 3 (1994). The corpus delicti rule provides that a defendant's confession may not be admitted as evidence unless there is direct or circumstantial evidence independent of the confession establishing the occurrence of a specific injury and some criminal agency as the source of the injury. *Konrad*, *supra* at 269-270. The identity of the offender is not part of the corpus delicti. *Id.*

We reject defendant's assertion that, under the corpus delicti rule, his conviction of first-degree felony murder and the related convictions involving a firearm must be reversed. This Court has previously held that "the corpus delicti rule is satisfied in prosecutions of first-degree felony murder by showing that a death has occurred as a result of some criminal agency." *Emerson (After Remand)*, *supra* at 347-348, citing *People v Hughey*, 186 Mich App 585, 589; 464 NW2d 914 (1990). Here, there was independent evidence that the victim died from a single gunshot in the back that was fired from approximately seven to ten inches away. Accordingly, the corpus delicti rule was fully satisfied for first-degree felony murder.

We also reject defendant's claim that, under the corpus delicti rule, his convictions for conspiracy to commit armed robbery, assault with intent to rob while armed, and the associated convictions involving a firearm must be reversed. The elements of assault with intent to rob while armed are an assault with force and violence, an intent to rob or steal, and the defendant being armed. *People v Federico*, 146 Mich App 776, 790; 381 NW2d 819 (1985). A conspiracy is an express or implied mutual agreement or understanding between two or more persons to commit a criminal act or to accomplish a legal act by unlawful means. Direct proof of the agreement is not required. Rather, it is sufficient that the circumstances, acts, and conduct of the parties establish an agreement. A conspiracy may be based on inferences or proven by circumstantial evidence. *People v Cotton*, 191 Mich App 377, 392-393; 478 NW2d 681 (1991).

Here, an agreement and an intent to rob the victim can reasonably be inferred from the circumstances of the crime and the condition of a bedroom in the victim's house. There was testimony that the victim knew defendant and that defendant was aware that the victim had been paid on the day of the incident. There was also testimony that defendant and another individual, armed with a gun, went to the victim's house to collect money. A witness saw a man outside of the victim's house at the time of the incident who was picked up by a car containing two other individuals. There was evidence that a bedroom door in the victim's house, which was always kept locked, had been broken down and the entire door handle had been broken off. The bedroom had been ransacked, with clothes strewn about and drawers pulled out. Finally, as previously indicated, there was independent evidence that the victim was killed in the house by a single gunshot in the back. Accordingly, sufficient evidence existed, independent of defendant's confession, to prove an agreement and intent to rob.

II

Defendant also argues that his convictions of both first-degree felony murder, based on the underlying felony of attempted armed robbery, and assault with intent to rob while armed, violate his right to be free from double jeopardy because attempted armed robbery is a lesser

included offense of assault with intent to rob while armed. US Const, Am V; Const 1963, art 1, § 15. The prosecution correctly concedes that this Court should vacate defendant's conviction for assault with intent to rob while armed. See *People v Harding*, 443 Mich 693, 705, 714; 506 NW2d 482 (1993); *People v Wilson*, 242 Mich App 350, 360; 619 NW2d 413 (2000); *People v Gimotty*, 216 Mich App 254, 259-260; 549 NW2d 39 (1996). Therefore, we vacate defendant's conviction and sentence for assault with intent to rob while armed.

Affirmed in part and vacated in part.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald